

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PATTY M. FIRTH,

Plaintiff,

v.

ZONE FUNDING, et al.,

Defendants.

CASE NO. C15-5738 BHS

ORDER

This matter comes before the Court on Defendants Bank of America (“BOA”), Mortgage Electronic Registration Systems (“MERS”), and Bank of New York Mellon’s (“NYM”) (collectively “Defendants”) motions to dismiss. Dkts. 9 & 13.

On September 8, 2015, Plaintiff Patty Firth filed a complaint against numerous defendants in Pierce County Superior Court for the State of Washington. Dkt. 1, Exh. A. Firth asserts causes of actions for breach of contract and slander of title. *Id.* On October 13, 2015, Defendants removed the matter to this Court. Dkt. 1.

On October 20, 2015, Defendants filed motions to dismiss. Dkts. 9 & 13. Firth did not respond to either motion. On November 13, 2015, BOA and MERS replied. Dkt. 15.


First, the Court will construe Plaintiffs’ failure to respond as an admission that Defendants’ motions have merit. Local Rules, W.D. Wash. LCR 7(b)(2).

1 Second, Defendants state that Firth has previously filed the same claims in this
2 Court, and the Court concluded that Firth's claims were frivolous and not plausible. C15-
3 5032RBL, Dkt. 10. Instead of either paying the filing fee or filing an amended
4 complaint, Firth filed an almost identical complaint in state court, which Defendants have
5 removed to this Court. The Court again concludes that Firth's claims are frivolous and
6 not plausible. Therefore, the Court **GRANTS** Defendants' motions to dismiss.

7 With regard to whether the dismissal will be with prejudice, the Court declines to
8 grant such relief at this time. While the Court recognizes Firth failed to respond, the
9 Ninth Circuit has repeatedly held that pro se parties should "be given leave to amend
10 [the] complaint unless it is 'absolutely clear that the deficiencies of the complaint could
11 not be cured by amendment.'" *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).
12 There is no need to test the boundaries of what is "absolutely clear." Therefore, the Court
13 **GRANTS** Firth leave to amend the complaint and Firth must file an amended complaint
14 no later than January 1, 2016. Failure to file an amended complaint or otherwise respond
15 will result in **DISMISSAL with prejudice** by the Clerk without further order of the
16 Court.

17 **IT IS SO ORDERED.**

18 Dated this 14th day of December, 2015.

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21 BENJAMIN H. SETTLE
22 United States District Judge